

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
)	
v.)	Criminal No. 05-394 (RBW)
)	
I. LEWIS LIBBY,)	
)	
Defendant.)	
_____)	

ORDER

Currently before the Court is the defendant's motion which seeks to prohibit the government from filing an ex parte submission under Section 4 of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. III (2000), without first making a particularized showing of exceptional circumstances. For the reasons set forth in the accompanying Memorandum Opinion, it is hereby this 5th day of April, 2006,

ORDERED that the defendant's motion is **GRANTED IN PART AND DENIED IN PART**. It is further

ORDERED that the government shall not present arguments concerning the materiality of documents in any ex parte Section 4 filings. It is further

ORDERED that the government will not be required to establish, through an adversarial process, that exceptional circumstances warrant an ex parte filings pursuant to Section 4. It is further

ORDERED that the government will not be prohibited from including in its ex

parte Section 4 filing a written justification for its proposed substitutions or redactions. It is further

ORDERED that any Section 4 filings submitted by the government must include a declaration, executed by an intelligence community official with the requisite classification review authority, which (1) describes the reasons for the classification of the information at issue, (2) sets forth the potential harm to national security that could result from its unauthorized disclosure, and (3) explains why the defense, based upon appropriate classification guidelines, does not have a “need-to-know the information.” It is further

ORDERED that the defendant may submit an ex parte affidavit by April 19, 2006, detailing his defense or defenses so that the Court is in a more informed position to determine whether the government’s proposed redactions or substitutions are necessary and adequate to serve the purposes of the defense.

SO ORDERED.

REGGIE B. WALTON
United States District Judge